

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK WHITE, #228524,

Plaintiff,

v.

CASE NO. 5:13-CV-12104
HONORABLE JOHN CORBETT O'MEARA

DANIEL HEYNS, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT
OR FOR A GRANT OF A CERTIFICATE OF APPEALABILITY**

This matter is before the Court on Plaintiff's motion for relief from judgment or for a grant of a certificate of appealability concerning the Court's denial of his application to proceed without prepayment of the filing fee, dismissal of his pro se civil rights complaint, and determination that an appeal cannot be taken in good faith. Plaintiff asserts that he should be allowed to proceed without prepayment of the filing fee despite his three-strike status because he is under "imminent danger" due to the lack of better quality orthopedic shoes needed for his diabetic condition.

The Court discussed this issue in its prior order and finds no reason to reconsider its decision. A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Plaintiff has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof as required by Local Rule 7.1(h)(3).

Furthermore, Plaintiff is not entitled to relief under Federal Rule of Civil Procedure 60(b).

Under that rule, a district court will grant relief from a final judgment or order only upon a showing of one of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b). Plaintiff makes such showing. The non-prejudicial dismissal of this action under 28 U.S.C. § 1915(g) was appropriate. Plaintiff is not eligible to proceed without prepayment of the filing fee due to his three-strike status.

While the Court is sympathetic to Plaintiff's condition, he has failed to show that he is under imminent danger of serious physical injury so as to fall within the statutory exception to the three strikes rule. And the circumstances giving rise to his complaint, which primarily concern prison policies, his prison finances, his legal property, his grievances, and his access to the courts, do not indicate a threat of imminent danger of serious physical injury. Plaintiff has failed to show that he falls within the exception to the three strikes rule. Accordingly, the Court **DENIES** Plaintiff's motion for relief from judgment or for a certificate of appealability. This case is closed.

IT IS SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: June 18, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, June 18, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager